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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/679,752

10/06/2003

Jeffrey H. Burns

DP-310264

2820

22851 7590 01/09/2009  
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EXAMINER

CUTLER, ALBERT H

ART UNIT

PAPER NUMBER

2622

MAIL DATE

DELIVERY MODE

01/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### **DETAILED ACTION**

1. This office action is responsive to communication filed on December 18, 2008.

#### ***Response to Arguments***

2. Applicant's arguments filed December 18, 2008 have been fully considered but they are not persuasive.

3. Applicant argues that the alleged modification of the CMOS camera system disclosed by Yamada et al. based on the disclosed electrochromic elements and optical sensors of Bauer et al. would not have been obvious to the person of ordinary skill in the art because such modifications would be contrary to the teachings of Yamada et al. Further, the structure and function of the electrochromic elements and optical sensors of Bauer et al. are significantly different from those of the CMOS camera system of Yamada et al. so as to discourage, rather than suggest incorporation of features from Bauer et al. into the structure described by Yamada et al.

4. The Examiner respectfully disagrees. Yamada et al., Bauer et al. and claim 1 all recite an optical sensor arranged apart from an optically transmissive substrate. Bauer et al. additionally teaches of placing a transparent, curable resin (154) around the sensor (see figure 10, column 14, lines 3-12). Nothing regarding the electrochromic elements or optical sensors of Bauer et al. is incorporated into the combination of Yamada et al. and Bauer et al., and thus whether the electrochromic elements and optical sensors of Bauer et al. are different from the CMOS camera system of Yamada et al. is a moot point. Bauer et al. simply teaches of protecting the optical sensor by using a transparent, curable resin, and the Examiner upholds that it would have been

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obvious to a person having ordinary skill in the art at the time of the invention to use such a resin to protect the optical sensor taught by Yamada et al.

5. In response to applicant's argument that the structure and function of the electrochromic elements and optical sensors of Bauer et al. are significantly different from those of the CMOS camera system of Yamada et al., the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

6. Applicant argues that the image pick-up opening is a fundamental and essential feature of the invention described by Yamada et al., and that if the image pick-up opening of Yamada et al. is filled with a transparent curable resin, such as the transparent curable resin disclosed by Bauer et al., the resulting structure would no longer have the required and essential image pick-up opening of Yamada et al.

7. The Examiner respectfully disagrees. The image pick-up opening of Yamada et al. simply allows light to travel from the lens to the sensor (see paragraphs 0010-0012). As Bauer et al. teaches of a transparent curable resin, light clearly still reaches the sensor after traveling through the optically transmissive substrate and the resin. Thus, even with the transparent curable resin taught by Bauer et al., placed in the image pick-up opening taught by Yamada et al., the image pick-up opening through which light passes to the optical sensor is still preserved due to the transparent nature of the resin.

8. Therefore, the rejection is maintained by the Examiner.

***Response to Amendment***

9. The amendment filed December 18, 2008 has been entered by the Examiner. Because the amendment only corrects a grammatical mistake, Applicant is referred to the final rejection mailed December 5, 2008 for a complete discussion of the current rejections.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALBERT H. CUTLER whose telephone number is (571)270-1460. The examiner can normally be reached on Mon-Thu (9:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Sinh N Tran/

Supervisory Patent Examiner, Art Unit 2622